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RECENT CASES.

ADVERSE POSSESSION — WHAT CONSTITUTES — CLAIM OF LEASEHOLD. — Under a void lease for a term of 99 years from the plaintiffs, the defendant was in possession during the period of the Statute of Limitations. *Held*, that he cannot be ousted until the end of the 99 years. *Warren Co.* v. *Lamkin*, 46 So. 497 (Miss.). See NOTES, p. 138.

BANKRUPTCY — PREFERENCES — EFFECT OF CLEARING HOUSE RULES. — The A bank, of the New York Clearing House, made clearances for the B bank, a non-member, under a contract in which the clearing house rules were incorporated. Those rules provided that such an agreement between a member and a non-member should not be terminated without one day's notice. The B bank became bankrupt, but checks on it presented through the clearing house the next day were paid by the A bank according to the agreement. Both the A bank and the drawers of these checks had notice of the bankruptcy. The A bank reimbursed itself from the funds of the B bank deposited as security at the time of the agreement. The receiver of the B bank brought suit to recover this amount from the A bank. *Held*, that he cannot recover. *Davenport* v. *National Bank of Commerce*, 112 N. Y. Supp. 291.

In general a payment from the assets of an insolvent to particular creditors after or within four months before bankruptcy is improper, and may be set aside by the trustee. *Chism* v. *Bank of Friars Point*, 5 Am. B. R. 56. But this rule does not apply where the payment is made for value. *Cook* v. *Tullis*, 18 Wall. (U. S.) 332. And a creditor who has previously obtained security may realize on it within the four months period. *In re Little*, 110 Fed. 621. Likewise it seems that a person who, previously to the insolvency, has obtained security for payments which he then contracted to make for the bankrupt should be protected, even if, by the previous contract, he is obliged to make such payments immediately before or after the bankruptcy. *Ryttenberg* v. *Schefer*, 131 Fed. 313. It has been held, moreover, on facts substantially the same as those in the principal case, that the tripartite agreement between the two banks and the clearing house was valid so that the member bank was bound to pay checks on the non-member presented through the clearing house the day after the non-member's bankruptcy, and was therefore entitled to reimburse itself from the securities it held. *O'Brien* v. *Grant*, 146 N. Y. 163.

BANKRUPTCY — PRIORITY OF CLAIMS — WATER RENTS ENTITLED TO PRIORITY AS TAXES. — The trustees of a bankrupt mortgagor of realty took possession of the premises and collected rents for about a year. While they were in possession the city levied water rents, and by statute such rents were made a lien on the property. The mortgagee bought the property at foreclosure and sought a decree directing the trustees to apply the rents first to payment of the water rents, then to payment of interest on the mortgage. *Held*, that he is entitled to the decree. *In re Industrial Cold Storage and Ice Co.*, 163 Fed. 390 (Dist. Ct., E. D. Pa.).

Under the National Bankruptcy Act a trustee must pay all taxes owing by the bankrupt, including those which have accrued since the filing of the petition. *In re Sims*, 118 Fed. 356. There is a conflict of authority, however, as to whether rents charged by a city for the use of water are taxes within the meaning of the act. *Springfield, etc., Ins. Co.* v. *Keeseville*, 148 N. Y. 46; *Jones* v. *Water Com'rs*, 34 Mich. 273. They are not subject to the constitutional requirement as to uniformity. *Wagner* v. *Rock Island*, 146 Ill. 139. And when charged for water actually used they are valid, although established without notice to the person paying them. *Silkman* v. *Water Com'rs*, 152 N. Y. 327. But taxes are invalid unless there is a provision for a hearing. *Re Trustees Union College*, 129 N. Y. 308. Water rents are not a lien on the property. *Chicago* v. *Northwestern, etc., Ins. Co.*, 218 Ill. 40. And when made so by statute are really liens for an indebtedness. See *Jones* v. *Water Com'rs*, *supra*.

They are in fact a price paid for a commodity, the obligation to pay resting on the promise of the owner implied in the taking of the water. *Vreeland* v. *O'Neil*, 36 N. J. Eq. 399. The better view, therefore, seems to be that water rents are not taxes, and should not constitute a prior lien on a bankrupt's estate.

BANKS AND BANKING — DEPOSITS — RIGHTS OF DEPOSITOR WITHDRAWING DEPOSIT DURING "RUN." — The petitioner, hearing rumors of its insolvency, withdrew his deposit from the X bank. But on the assurance of the X bank's officers that the bank was solvent he immediately returned the money and took drafts for the amount on the Y bank. In fact the X bank was insolvent, though its officers did not know the fact. The drafts were not paid, the Y bank applying the fund on which they were drawn to the payment of notes of the X bank held by it and secured by collateral. *Held*, that the petitioner is entitled to be subrogated to the rights of the Y bank in the collateral which it held. *Livingstain* v. *Columbia Banking and Trust Co.*, 62 S. E. 249 (S. C.).

The prevailing doctrine is that a payment to a depositor during a "run" on a bank is not a preference, provided the bank is continuing in business and the payment is made in the regular course thereof, even though the bank is insolvent to the knowledge of its officers. *Stone* v. *Jenison*, 111 Mich. 592. Hence the money withdrawn by the petitioner in the present case was not impressed with a trust in favor of the bank's general creditors. The drafts must therefore be regarded as issued for cash paid into the bank. But this does not warrant the relief given. For by the weight of authority the purchaser of a draft drawn by an insolvent bank has no priority over the general creditors against the funds on which the draft was drawn. *Clark* v. *Toronto Bank*, 72 Kan. 1. *Contra*, *Roberts* v. *Corbin*, 26 Ia. 315. It is therefore submitted that the case falls within the rule that subrogation, being founded on equitable principles, should not be applied against the interests of persons having equities equal to that of the claimant. *Cf. Ex parte Reynolds*, 68 S. C. 436. But see *Livingstain* v. *Columbia Bank*, 77 S. C. 305.

BILLS AND NOTES — DOCTRINE OF PRICE *v.* NEAL — WHERE DEFENDANT IS NOT AN INNOCENT HOLDER FOR VALUE. — A person not disclosed forged a check payable to a city and without the defendant's knowledge or request delivered it to the city in payment of improvement assessments on the defendant's land. The drawee bank paid the check to an innocent holder for value and after discovery of the forgery sought to recover from the defendant. *Held*, that the plaintiff may not recover. *Title Guarantee and Trust Co.* v. *Haven*, 126 N. Y. App. Div. 802.

It has long been law that the drawee of a forged check who has paid the same to an innocent holder for value cannot recover from the latter. *Price* v. *Neal*, 3 Burr. 1354. Not only has this much criticised rule been adopted as common law in this country, but it has also been made a part of the Negotiable Instruments Law. See N. Y. Laws of 1897, c. 612, § 112. Though the principal case is professedly decided on the doctrine of *Price* v. *Neal*, it is difficult to see the application. This is not a case wherein "one of two innocent parties must suffer a loss in any event," nor does it come within the reason of the rule that as between parties having equal equities the loss must rest where it falls." See 4 HARV. L. REV. 297. Whether an action for money paid to the defendant's use would lie, the authorities seem doubtful. *Mattlage* v. *Lewi*, 6 N. Y. Misc. 150. However, it is submitted that a quasi-contractual remedy exists; for the defendant, if allowed to retain the fruits of the fraud without liability, is clearly unjustly enriched.

BILLS AND NOTES — FICTITIOUS PAYEE — THE NEGOTIABLE INSTRUMENTS LAW. — A drew a check on the plaintiff payable to B, a real person, and forged C's signature thereto. The plaintiff accepted the check. A then forged B's signature as indorser after which the check passed in due course of business to the defendant who paid it. The plaintiff paid the defendant, but on discovering the forgery sought to recover the amount paid. *Held*, that the plaintiff may